

**§ 92.5 Who is eligible to participate?**

If you are a permanent resident of a village within a subsistence harvest area, you will be eligible to harvest migratory birds and their eggs for subsistence purposes during the applicable periods specified in subpart D of this part.

(a) *Included areas.* Village areas located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range are subsistence harvest areas, except that villages within these areas not meeting the criteria for a subsistence harvest area as identified in paragraph (c) of this section will be excluded from the spring and summer subsistence harvest.

(1) Any person may request the Co-management Council to recommend that an otherwise included area be excluded by submitting a petition stating how the area does not meet the criteria identified in paragraph (c) of this section. The Co-management Council will forward petitions to the appropriate regional management body. The Co-management Council will then consider each petition and will submit to the Service any recommendations to exclude areas from the spring and summer subsistence harvest. The Service will publish any approved recommendations for public comment in the FEDERAL REGISTER.

(2) Based on petitions for inclusion recommended by the Co-management Council, the Service has added the following communities to the included areas under this part:

(i) Upper Copper River Region—Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina.

(ii) Gulf of Alaska Region—Chugach Community of Tatitlek, Chugach Community of Chenega, Chugach Community of Port Graham, Chugach Community of Nanwalek.

(iii) Cook Inlet Region—Tyonek.

(iv) Southeast Alaska Region—Hoonah, Craig, Hydaburg, and Yakutat.

(b) *Excluded areas.* Excluded areas are not subsistence harvest areas and are closed to harvest. Residents of excluded areas are not eligible persons as defined in § 92.4. Communities located within the excluded areas provided in

paragraphs (b)(2) and (b)(3) of this section may petition the Co-management Council through their regional management body for designation as a spring and summer subsistence harvest area. The petition must state how the community meets the criteria identified in paragraph (c) of this section. The Co-management Council will consider each petition and will submit to the Service any recommendations to designate a community as a spring and summer subsistence harvest area. The Service will publish any approved new designations of communities for public comment in the FEDERAL REGISTER. Excluded areas consist of the following:

(1) All areas outside of Alaska.

(2) Village areas located in Anchorage, the Matanuska-Susitna Borough, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, Southeast Alaska, and the Central Interior Excluded Area as described in paragraph (b)(3) of this section generally do not qualify for a spring and summer harvest.

(3) The Central Interior Excluded Area comprises the following: That portion of Unit 20(A) east of the Wood River drainage and south of Rex Trail, including the upper Wood River drainage south of its confluence with Chicken Creek; that portion of Unit 20(C) east of Denali National Park north to Rock Creek and east to Unit 20(A); and that portion of Unit 20(D) west of the Tanana River between its confluence with the Johnson and Delta Rivers, west of the east bank of the Johnson River, and north and west of the Volmar drainage, including the Goodpaster River drainage. The following communities are within the Excluded Area: Delta Junction/Big Delta/Fort Greely, McKinley Park/Village, Healy, Ferry, and all residents of the formerly named Fairbanks North Star Borough Excluded Area.

(c) *Criteria for determining designation as a spring and summer subsistence harvest area.* A previously excluded community may be included in the spring/summer harvest regulations if recommended by the Alaska Migratory Bird Co-management Council. The Alaska Migratory Bird Co-management Council will recommend designation of subsistence harvest areas based on a

## U.S. Fish and Wildlife Serv., Interior

## § 92.10

deliberative process using the best available information on nutritional and cultural needs and customary and traditional use. The Alaska Migratory Bird Co-management Council recommendations will accommodate traditional spring and summer harvests without creating new traditions or increasing harvest of migratory birds. Recommendations will be made based on the majority of factors and the weight of the evidence using the following criteria:

(1) A pattern of use recurring in the spring and summer of each year prior to 1999, excluding interruptions by circumstances beyond the user's control;

(2) The consistent harvest and use of migratory birds on or near the user's permanent residence;

(3) A use pattern that includes the handing down of knowledge of hunting skills and values from generation to generation;

(4) A use pattern in which migratory birds are shared or distributed among others within a definable community of persons; a community for purposes of subsistence uses may include specific villages or towns, with a historical pattern of subsistence use; and

(5) A use pattern that includes reliance for subsistence purposes upon migratory birds or their eggs and that meets nutritional and other essential needs including, but not limited to, cultural, social, and economic elements of the subsistence way of life.

(d) *Participation by permanent residents of excluded areas.* Immediate family members who are residents of excluded areas may participate in the customary spring and summer subsistence harvest in a village's subsistence area with permission of the village council, to assist indigenous inhabitants in meeting their nutritional and other essential needs or for the teaching of cultural knowledge. A letter of invitation will be sent by the village council to the hunter with a copy to the Executive Director of the Co-management Council, who will inform law enforcement and the Service's Co-management Council coordination office within 2 working days. The Service will then inform any affected Federal agency when residents of excluded areas are allowed to participate in the subsist-

ence harvest within their Federal lands.

[67 FR 53517, Aug. 16, 2002, as amended at 68 FR 43027, July 21, 2003; 69 FR 17327, Apr. 2, 2004; 70 FR 18248, Apr. 8, 2005; 72 FR 18322, Apr. 11, 2007; 79 FR 19458, Apr. 8, 2014]

### § 92.6 Use and possession of migratory birds.

You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part.

(a) *Eligible persons.* Under this part, you may take birds for human consumption only. Harvest and possession of migratory birds must be done using nonwasteful taking. Nonedible byproducts of migratory birds taken for food may be used for other purposes, except that taxidermy is not allowed.

(b) *Noneligible persons.* You may receive portions of birds or their eggs not kept for human consumption from eligible persons only if you have a valid permit issued under 50 CFR 21.27 for scientific research or education, and consistent with the terms and conditions of that permit.

[69 FR 17227, Apr. 2, 2004]

### §§ 92.7–92.9 [Reserved]

## Subpart B—Program Structure

### § 92.10 Alaska Migratory Bird Co-management Council.

(a) *Establishment.* The U.S. Fish and Wildlife Service hereby establishes, as authorized by the Protocol amending the Canada Treaty, a statewide management body to be known as the Alaska Migratory Bird Co-management Council.

(b) *Membership.* The Co-management Council must include Alaska Native, Federal, and State of Alaska representatives, as equals.

(1) The Federal and State governments will each seat one representative. The Federal representative will be appointed by the Alaska Regional Director of the U.S. Fish and Wildlife Service, and the State representative will be appointed by the Commissioner of the Alaska Department of Fish and Game. Regional partner organizations may seat 1 representative from each of the 12 regions identified in § 92.11(a).